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Attorney at Law
117 North Broadway
Escondido, CA 92025
(760) 735-2900

Attorney for Plaintiff
Inez Martinez-Garcia

FILED
2008 JAN 24 PM 3:27
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ________ DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

INEZ MARTINEZ-GARCIA, Plaintiff, v. EMILIO GONZALEZ, Director, United States Citizenship & Immigration Services; and, PAUL PIERRE, Director, San Diego District Office, United States Citizenship & Immigration Services, Defendants.	Case No. '08 CV 0150 W AJB COMPLAINT FOR RELIEF IN THE NATURE OF MANDAMUS

Inez Martinez-Garcia ("Plaintiff") hereby alleges as follows:

1. Plaintiff resides within the jurisdiction of this court and is an applicant for lawful permanent residence in the United States under the Immigration & Nationality Act, 8 U.S.C. § 1101 et seq.

2. Defendant Emilio Gonzalez is the Director of United States Citizenship & Immigration Services ("USCIS"), an agency of the United States Government, and is sued in this official capacity only.

3. Defendant Paul Pierre is the Director of the San Diego District Office of United States Citizenship & Immigration Services, an agency of the United States Government, and is sued in this official capacity only.

4. The court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, 28 U.S.C. § 1651, 5 U.S.C. § 701 et seq. and 28 U.S.C. § 2201 et seq. and relief is requested pursuant to these statutes.

CAUSE OF ACTION

(Failure to Adjudicate I-485 Application to Adjust Status)

5. On July 27, 2005, Plaintiff filed with USCIS San Diego an I-485 application to adjust her status to that of a lawful permanent resident of the United States.[1]

6. USCIS has still not adjudicated the I-485 application.

7. Defendants' failure to adjudicate the I-485 application is not in accordance with law.

8. Plaintiff is damaged by Defendants' failure to act in accordance with law inasmuch as she is being denied lawful permanent resident status in the United States.

WHEREFORE, Plaintiff respectfully requests that the court enter judgment as follows:

1. That Defendants be ordered to adjudicate the aforementioned I-485 application;
2. For reasonable attorneys fees and costs; and
3. Granting such other and further relief as the court deems just and proper.

DATED: January 24, 2008

KEVIN A. BOVE
Attorney for Plaintiff
Inez Martinez-Garcia

[1] Exhibit A (USCIS Receipt Notice).

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action

THE UNITED STATES OF AMERICA

Receipt Number: MSC-05-300-23283		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status
Received Date: July 27, 2005	Priority Date:	Applicant: A096590395 MARTINEZ GARCIA, INEZ
Notice Date: July 29, 2005	Page 1 OF 1	ASC Code: 3

INEZ MARTINEZ GARCIA
426 GRANT ST
OCEANSIDE CA 92054

Notice Type: Receipt Notice

Amount Received: $1,385.00

The above application has been received. **Please notify us immediately if any of the above information is incorrect.** If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

BIOMETRICS-
The next step is to have your biometrics taken, if required, at a US Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

BIOMETRICS PROCESSING STAMP
ASC SITE CODE: XSC
BIOMETRICS QA REVIEW BY: 15787 ON 092305
TENPRINTS QA REVIEW BY: 15787 ON SEP 23 2005

PLEASE NOTE-

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

WHAT TO BRING TO Your appointment -
Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:
- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.
Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

CASE STATUS -
Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at www.USCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services
P.O. Box 648005
Lee's Summit, MO 64064
National Customer Service Center: 1-800-375-5283

A

5115337 0002569547

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

INEZ MARTINEZ-GARCIA

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

KEVIN A. BOVE (149675)
117 N. Broadway
Escondido CA 92025 (760) 735-2900

DEFENDANTS

EMILIO GONZALEZ et al.

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

FILED
2008 JAN 24 PM 3:30
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
KWH DEPUTY

Attorneys (If Known)

'08 CV 0150 W AJB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury—Med. Malpractice
- ☐ 365 Personal Injury — Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☒ 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

MANDAMUS 28 USC 1361

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $**
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) (See instructions): **IF ANY** None
JUDGE ________ DOCKET NUMBER ________

DATE 1/24/08 SIGNATURE OF ATTORNEY OF RECORD [signature]

FOR OFFICE USE ONLY

RECEIPT # 14683 AMOUNT $350 1/24/08 DH APPLYING IFP ________ JUDGE ________ MAG. JUDGE ________

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 146835 - BH

January 24, 2008
15:31:51

Civ Fil Non-Pris
USAO #.: 08CV0150 CIVIL FILING
Judge..: THOMAS J WHELAN
Amount.: $350.00 CK
Check#.: BC# 3656

Total-> $350.00

FROM: MARTINEZ-GARCIA V. GONZALEZ ET
CIVIL FILING